

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of :)	
)	
Waitt Broadcasting, Inc.)	
)	CSR-6261-M
v.)	
)	
Beresford Cablevision)	
)	
Request for Carriage of Stations KMEG(TV) and)	
KMEG-DT		
Sioux City, Iowa		

MEMORANDUM OPINION AND ORDER

Adopted: April 12, 2004

Released: April 14, 2004

By the Deputy Chief, Policy Division, Media Bureau:

I. INTRODUCTION

1. Waitt Broadcasting, Inc., licensee of analog television station KMEG(TV), Channel 14 and KMEG-DT, digital television station Channel 39 (collectively "KMEG"), Sioux City, Iowa, filed the above-captioned complaint against Beresford Cablevision ("Beresford"), to immediately commence carriage of KMEG on analog Channel 14 and DTV Channel 39 on Beresford's cable television system. In addition, KMEG asserts that it is entitled to mandatory channel position rights on the system. No comments or oppositions were received. For the reasons discussed below, we dismiss KMEG's complaint with regard to digital carriage and grant its complaint to the extent stated herein.

II. DISCUSSION

2. In support of its complaint, KMEG asserts that it is the only CBS television affiliate in the Sioux City DMA and that Beresford is also in the Sioux City DMA, but that Beresford refuses to carry either KMEG signal.¹ KMEG indicates that it formally requested that Beresford commence carriage of KMEG on the cable system.² KMEG claims that Beresford did not respond to its request for mandatory carriage in violation of Section 76.61(a)(2) of the Commission's rules, which requires cable operators to respond in writing to requests for carriage within 30 days of receipt of such requests.³ KMEG requests that the Commission order Beresford to commence carriage of both KMEG's analog and digital signals on Beresford's cable system serving the Sioux Falls community. It also states that KMEG is entitled to channel position rights.

3. Pursuant to Section 614 of the Communications Act and implementing rules adopted by the Commission in *Implementation of the Cable Television Consumer Protection and Competition Act of*

¹ Complaint at 1.

² Complaint at 2.

³ *Id.* See 47 C.F.R. § 76.61(a)(2).

1992, *Broadcast Signal Carriage Issues* (“*Must Carry Order*”), commercial television broadcast stations are entitled to assert mandatory carriage rights on cable systems located within the station’s market.⁴ A station’s market for this purpose is its “designated market area,” or DMA, as defined by Nielsen Media Research.⁵ The term DMA is a geographic market designation that defines each television market exclusive of others, based on measured viewing patterns.

4. With respect to “advanced” or digital television signals, Section 614(b)(4)(b) of the Act requires that:

At such time as the Commission prescribes modifications of the standards for television broadcast signals, the Commission shall initiate a proceeding to establish any changes in the signal carriage requirements of cable television systems necessary to ensure cable carriage of such broadcast signals of local commercial television stations which have been changed to conform with such modified standards.

5. In the *First Report and Order and Further Notice of Proposed Rulemaking* (“*DTV Order*”) the Commission adopted rules resolving a number of the technical and legal matters related to the cable carriage of digital broadcast signals.⁶ The *DTV Order* clarified that a television station broadcasting only digitally can immediately assert its right to carriage on a cable system.⁷ The *DTV Order*, however, did not conclude that a television broadcast station may assert a right to carriage for both its analog and digital signals if it continues to broadcast in both formats during the transition period. The Commission found that it had insufficient evidence to conclude that such a requirement was mandated by the statute or otherwise required as a matter of policy and sought additional information to assist in resolving this question.⁸ Accordingly, in the proceeding mandated by Section 614(b)(4)(b), rules mandating carriage of both the analog and digital services of television stations were not adopted.

6. We find KMEG’s request for carriage of both its analog and digital signals to be inconsistent with the Commission’s *DTV Order*, and therefore dismiss the instant complaint with respect to KMEG’s request for dual carriage. Television stations that broadcast in both analog and digital modes cannot currently assert digital carriage rights under Section 614 or Section 615 of the Communications Act.

7. With regard to its analog signal, we find that the unopposed representations demonstrate KMEG qualifies as a local station entitled to mandatory carriage on the Beresford cable system. KMEG formally notified Beresford of its carriage request, the cable system failed to respond, and KMEG timely filed its complaint. Cable operators have the burden of showing that a commercial television station that is located in the same television market is not entitled to carriage.⁹ Beresford filed no response to the complaint nor made any showing concerning the quality of the KMEG signal at the principal headend of

⁴ 8 FCC Rcd 2965, 2976-2977 (1993).

⁵ Section 614(h)(1)(C) of the Communications Act, as amended by the Telecommunications Act of 1996, provides that a station’s market shall be determined by the Commission by regulation or order using, where available, commercial publications which delineate television markets based on viewing patterns. *See* 47 U.S.C. § 534(h)(1)(C). Section 76.55(e) of the Commission’s rules requires that a commercial broadcast television station’s market be defined by Nielsen Media Research’s DMAs. 47 C.F.R. § 76.55(e).

⁶ *See Carriage of Digital Television Broadcast Signals, First Report and Order and Further Notice of Proposed Rulemaking*, 16 FCC Rcd 2598 (2001).

⁷ *Id.* at 2599.

⁸ *Id.* at 2600.

⁹ *See Must Carry Order*, 8 FCC Rcd at 2991.

its cable system serving the community. Not having filed an opposition to the complaint, Beresford failed to meet its burden. Accordingly, we grant KMEG's carriage complaint with respect to its analog signal. In addition, we grant KMEG's analog channel positioning request which is consistent with its rights under the Commission's rules.¹⁰

III. ORDERING CLAUSES

8. Accordingly, **IT IS ORDERED**, that the digital carriage complaint filed by Waitt Broadcasting, licensee of KMEG(TV) Sioux City, Iowa against Beresford Cablevision **IS DISMISSED** pursuant to Section 614(d)(3) of the Communications Act of 1934.

9. **IT IS FURTHER ORDERED**, that Beresford Cablevision **SHALL COMMENCE CARRIAGE** of the analog signal of KMEG on its cable system serving Sioux City, Iowa within 60 days of the release date of this *Order*.

10. **IT IS FURTHER ORDERED**, that Beresford Cablevision **SHALL COMMENCE CARRIAGE** of KMEG on cable channel 14, or a mutually agreed upon channel, throughout its system serving Sioux City, Iowa.

11. This action is taken under delegated authority pursuant to Section 0.283 of the Commission's rules.¹¹

FEDERAL COMMUNICATIONS COMMISSION

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¹⁰ 47 C.F.R. § 76.57.

¹¹ 47 C.F.R. § 0.283.